

**STATE
WATER
RESOURCES
CONTROL
BOARD**



**CALIFORNIA
ENVIRONMENTAL
PROTECTION
AGENCY**



Policy for Implementing the Drinking Water State Revolving Fund



**Effective:
January 1, 2015**

Prepared by:
THE DIVISION OF FINANCIAL ASSISTANCE

STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

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POLICY FOR IMPLEMENTING THE DRINKING WATER STATE REVOLVING FUND

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I. INTRODUCTION

This Policy is adopted for the State Water Resource Control Board's (State Water Board) implementation of the 1996 Amendments to the federal Safe Drinking Water Act (SDWA), which created the Drinking Water State Revolving Fund (DWSRF) program. The DWSRF provides various types of assistance for Public Water Systems (PWS), including projects that: (1) address public health risk problems, (2) are needed to comply with the SDWA, and (3) assist those most in need on a per household affordability basis. The federal DWSRF provides capitalization grants to states that may be used to provide loans and other assistance to public water systems. The DWSRF program was initially implemented by the California Department of Health Services, and subsequently transferred to the State Department of Public Health. As of July 1, 2014, the program is implemented by the State Water Board.

The California statutory basis for the DWSRF is established in Sections 116760 – 116762.60 of the California Health and Safety Code. The program is intended to provide financial assistance in perpetuity using federal and state funds.

Notwithstanding any provision of this Policy, the State Water Board will implement the DWSRF program consistent with federal law and policy.

The provisions of this Policy are effective January 1, 2015, unless otherwise required by federal or state statute, guidance, regulation, or agreement.

II. PURPOSE AND OBJECTIVE

Under federal and state law the primary purpose of the DWSRF is to assist public water systems in financing the cost of drinking water infrastructure projects needed to achieve or maintain compliance with SDWA requirements and to further the public health objectives of the SDWA.

III. HUMAN RIGHT TO WATER

Section 106.3 of the California Water Code provides that it is the policy of the state that every human being has the right to safe, clean, affordable and accessible water adequate for human consumption, cooking, and sanitary purposes. This section requires the State Water Board to consider this state policy when adopting policies and grant criteria. The State Water Board has considered the provisions of Section 106.3 of the Water Code in establishing this Policy.

IV. DEFINITIONS

The following words where used in this Policy shall have the meaning hereafter ascribed to them:

- (a) “Acceptable Result” means the project that, when constructed, solves the problem for which the project was placed on the comprehensive list, ensures the owner and operator of the improved or restructured public water system shall have long-term technical, managerial, and financial capacity to operate and maintain the public water system in compliance with state and federal safe drinking water standards, can provide a dependable source of safe drinking water long-term, and is both short-term and long-term affordable, as determined by applicable regulations adopted by the State Water Board.
- (b) “Applicant” means the legal entity with the authority to enter into contracts and incur debt on behalf of the community and/or public water system(s) to be served by the project being financed by the DWSRF.
- (c) “Bridge Financing” means interim financing to cover eligible project costs until DWSRF financing for the project is received from the State Water Board.
- (d) “Capitalization Grant” means federal DWSRF funds granted to the State Water Board by the United States Environmental Protection Agency (USEPA) in a particular year pursuant to certain terms and conditions.
- (e) “CEQA” means the California Environmental Quality Act (commencing with Section 21000 of the Public Resources Code and including the regulations and guidelines adopted by the California Resources Agency to implement the Act).
- (f) “Community Water System” or “CWS” means a public water system that: 1) serves at least 15 service connections used by yearlong residents of the area served by the system, or 2) regularly serves at least twenty-five (25) yearlong residents of the area served by the system.
- (g) “Completion of Construction” means that the Division has conducted a final inspection of the project and has notified the water system that project construction has been completed in conformance with the plans and specifications identified in the construction financing agreement.
- (h) “Completion of Planning/Design” means that the Division has accepted the deliverables identified in the planning/design financing agreement.

- (i) “Comprehensive List” means a list that consists of all planning/design and construction projects for which at least one portion of an application has been received, including sufficient information for an initial ranking.
- (j) “Consolidation” means a project that involves the restructuring of two or more public water systems into a single public water system. (*Appendix A* contains additional guidance)
- (k) “Construction Financing” means financing to cover some or all of the cost of the construction of a water system infrastructure project, including but not limited to planning, preliminary engineering, design, treatment systems, water sources, interconnections, consolidations, acquisition of water systems, and purchase of land or equipment.
- (l) “Contingency” means the amount budgeted for unforeseen costs.
- (m) “Cost-effective” means achieves an acceptable result at the most reasonable cost.
- (n) “Disadvantaged Community” or “DAC” means the entire service area of a community water system in which the median household income is less than eighty percent (80%) of the statewide median household income.
- (o) “Division” means the Division of Financial Assistance within the State Water Board.
- (p) “Eligible Project Cost” means those costs of a project that are deemed by the Division to be eligible for reimbursement from the DWSRF pursuant to federal and state laws, rules, regulations, policies, and guidelines.
- (q) “Eligible System” means any of the following:
 - a. Privately-owned and publicly-owned community water systems and non-profit non-community water systems.
 - b. Community water systems created by the Project that meet the federal requirements for new systems.
 - c. Systems referred to in Section 1401(4)(B) of the SDWA.
- (r) “Environmental Document” means a Categorical Exemption, Initial Study and Negative Declaration, Mitigated Negative Declaration, or an Environmental Impact Report (EIR) prepared in accordance with CEQA and associated supporting documents showing compliance with federal environmental laws.
- (s) “Executive Director” means the Executive Director of the State Water Board.

- (t) “Financing Agreement” means the written agreement signed by all parties and any amendments thereto, between the State Water Board and the recipient, setting forth the terms, provisions, and conditions governing the DWSRF financing and the repayment, if any. This document may be a loan, a grant, or another financing instrument.
- (u) “Fundable List” means a list of projects in the IUP that are expected to receive assistance from the DWSRF in a particular state fiscal year.
- (v) “Ground Water Under the Direct Influence” or “GWUDI” means groundwater having incomplete or undependable subsurface filtration of surface water and infiltrating precipitation.
- (w) “Intended Use Plan” or “IUP” means the annual document that the State Water Board submits to USEPA, after public review and comment, which identifies the intended uses of DWSRF funds for a particular state fiscal year and describes how those uses support the overall goals of the DWSRF program.
- (x) “Legal Entity” means an entity that is duly formed and operating under the laws of this State.
- (y) “Loan” means and includes any repayable financing instrument, including a loan, bond, installment sale agreement, note, or other evidence of indebtedness.
- (z) “Median Household Income” or “MHI” means the household income that represents the median value for the service area of a public water system. For projects involving the extension of water from an existing public water system to geographical areas not served by the public water system (including the service area of one or more state small water systems or parcels served by private wells or surface water sources), the MHI of the existing public water system’s service area is used. For consolidation projects, the MHI of the service area of the individual participating public water system(s) are used.
- (aa) “Not-For-Profit Water Company” means a mutual benefit water company, homeowner’s association, or cooperative, that is exempt from taxes under Section 501(c) of the United States Internal Revenue Code.
- (bb) “Operating Agreement” means the Operating Agreement between the State of California and the United States Environmental Protection Agency Region IX for Implementing and Managing the Drinking Water State Revolving Fund Program, dated July 30, 1998, and any amendments thereto. (See *Appendix B*)

- (cc) “Planning/Design Financing” means financing to cover some or all of the cost of preliminary activities necessary to construct a project including, but not limited to, studies, planning, preliminary engineering, and design for a project.
- (dd) “Pledged Revenue and Funds” or “PRF” means one or more sources of existing revenue and/or funds pledged by the applicant as security for DWSRF financing.
- (ee) “Primary Drinking Water Standard” means those standards as defined pursuant to Section 116275 et seq. of the California Health and Safety Code.
- (ff) “Private Lateral” means the water pipe from a service connection (as defined in Section 116275 of the California Health and Safety Code) to a residential, commercial, institutional, or industrial structure.
- (gg) “Project” means cost-effective facilities for the construction, improvement, or rehabilitation of a public water system. It may include the planning and design of facilities, annexation or consolidation of water systems, source water assessments, source water protection, and other activities specified in the federal act.
- (hh) “Public Agency” means any city, county, district, joint powers authority, or other political subdivision of the state that owns or operates a public water system.
- (ii) “Public Water System” or “PWS” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals, pursuant to the SDWA.
- (jj) “Recipient” means a legal entity that enters into a DWSRF financing agreement with the State Water Board.
- (kk) “Regional Project” means a project to provide a consolidated source of supply, treatment facilities and/or other system components to address the existing public health problem for each participating public water system(s). A regional project may include the extension of water to defined geographical areas within the reasonable vicinity of the project, served by individual domestic wells or by water systems that do not meet the definition of a public water system; such defined geographical areas are limited to those in which it is demonstrated that the source of domestic water does not meet primary drinking water standards.

- (ll) “Restructured Water System” means the single public water system which results from the consolidation of two or more water systems.
- (mm) “Safe Drinking Water Act” or “SDWA” means the Federal Safe Drinking Water Act (42 U.S.C. § 300f et seq.), including any amendments thereto.
- (nn) “Service Area” means all of the geographical area that is currently served by a public water system.
- (oo) “Severely Disadvantaged Community” or “SDAC” means the entire service area of a community water system in which the median household income is less than sixty percent (60%) of the statewide median household income.
- (pp) “Small Community Water System” means a community water system that serves no more than 3,300 service connections or a yearlong population of no more than 10,000 persons.
- (qq) “Soft Costs” means an amount of money for eligible planning, design, engineering, construction management, environmental, and administration costs of the project.
- (rr) “State” means the State of California.
- (ss) “State Water Board” means the State Water Resources Control Board.
- (tt) “Technical, Managerial, and Financial Capacity” or “TMF” means the ability of a public water system to plan for, achieve, and maintain long term sustainable compliance with drinking water standards, thereby ensuring the quality and adequacy of the water supply. (See *Appendix C*)
- (uu) “Urban Water Supplier” means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually, pursuant to Section 10617 of the California Water Code.
- (vv) “Useful Life” means the estimated period of time over which the DWSRF financed facility will serve its intended purpose in a cost-effective manner from the estimated initiation of operation date.
- (ww) “USEPA” means the United States Environmental Protection Agency.

V. PROGRAM MANAGMENT

A. Comprehensive List

The primary purpose of the Comprehensive List is to identify potentially eligible future projects and prioritize the marketing, assistance, and application review efforts of Division staff and management. A project must be on the current Comprehensive List to be considered for financing. Placement of a project on the Comprehensive List does not constitute a commitment to provide financing.

B. Development of the Comprehensive List

The Comprehensive List identifies projects potentially eligible for assistance from the DWSRF program. As the Division receives DWSRF application packages from applicants, it will assign to each project a category from *Section V.C.1* of this Policy. The Division will recommend to the Executive Director, in consultation with the Division of Drinking Water, if necessary, whether the project should be added to the Comprehensive List or whether an existing project should be updated.

The Executive Director will generally update the Comprehensive List quarterly. The Executive Director may update the Comprehensive List more frequently if necessary or less frequently if there are no new projects to be added. The Comprehensive List will be posted promptly on the State Water Board's website after it has been updated by the Executive Director.

C. Priority System

To the maximum extent practicable, priority will be given to projects which: 1) address the most serious risk to human health, 2) are necessary to ensure compliance with the requirements of the SDWA, and 3) assist systems most in need on a per household basis. Projects are ranked by the categories established below to achieve these objectives.

1. Categories

Each project will be assigned to one of the following categories:

Category A - Immediate Health Risk

- Documented waterborne disease outbreaks attributable to the water system.
- Water systems under a court order to correct SDWA violations or to correct water outage problems.

- Total coliform Maximum Contaminant Level (MCL) violations attributable to active sources contaminated with coliform bacteria (fecal, E. coli, or total coliform).
- Severe domestic water supply outage(s) posing an imminent threat to public health and safety.
- The distribution of water containing nitrates/nitrites or perchlorate in excess of the Maximum Contaminant Level (MCL).

Category B - Untreated or At-Risk Sources

- Surface water or GWUDI sources that are untreated, not filtered, or have other filtration treatment deficiencies that violate federal or state regulations.
- Non-GWUDI groundwater sources that are contaminated with fecal coliform or E. coli and are inadequately treated.
- Uncovered distribution reservoirs.

Category C - Compliance or Shortage Problems

- Water quantity problems caused by source capacity, or water delivery capability that is insufficient to meet existing demand.
- The distribution of water containing chemical or radiological contamination in violation of a state or federal primary drinking water standard (other than nitrate/nitrite or perchlorate).
- Total Coliform Rule violations for reasons other than source contamination.

Category D - Inadequate Reliability

- Non-metered service connections, or defective water meters.
- CWSs, and PWSs owned by public schools, with a single source and no backup supply.
- Distribution reservoirs with non-rigid covers in active use.
- Disinfection facilities that lack needed reliability features, such as chlorine analyzers or alarms.
- Disinfection deficiencies that violate Waterworks Standards.

Category E - Secondary Risks

- The distribution of water that exceeds secondary drinking water standards.
- The distribution of water in excess of a published chemical notification level.
- The distribution of water which has exceeded a primary drinking water standard in one or more samples, but has not violated a running average standard.
- A standby groundwater source that exceeds a primary drinking water standard.

- Deficiencies that violate Waterworks Standards (other than those already covered above).

Category F - Other Projects

- Deficiencies attributable to the water system that address present or prevent future violations of health-based standards (other than those already covered above).

2. Other Factors

Other factors are used in prioritizing the review of projects within a category, and do not affect a project's category. A project that includes or supports one or more of the following will receive priority over other projects within the same category:

- Disadvantaged Communities: The project benefits a DAC or SDAC.
- Consolidation: The project will result in the consolidation of water systems.

D. Financing of Projects

The Division will review and approve financing for projects on the Comprehensive List with complete applications in the order they are ranked – Category A being the highest priority and Category F being the lowest priority. If the State Water Board lacks sufficient funds, whether in the form of a loan or principal forgiveness, to finance all projects with a complete application, then the Division will first fund projects based on the categories established above. The Division may bypass any project where it determines that it is not currently feasible to fund the project. Bypassed projects will remain on the comprehensive list and may be funded at a later date when it does become feasible to fund the project.

The Division may limit funding to costs necessary to enable a public water system to meet primary drinking water standards, as defined in the California Health and Safety Code, commencing with Section 116270. Lack of funding does not affect the requirement that a funded system must meet TMF.

E. Project Removals

1. The Division will monitor the progress of projects on the Comprehensive List to ensure that applicants are proceeding expeditiously with their projects.
2. The Executive Director will remove any project from the Comprehensive List when:

- i. The project has been on the Comprehensive List for at least four (4) consecutive quarters, and the applicant has been non-responsive or has not requested that the project remain on the Comprehensive List;
 - ii. The State Water Board so instructs;
 - iii. The project has received DWSRF financing or alternative financing for the project;
 - iv. The water system ceases to exist or becomes ineligible;
 - v. The problem no longer exists or has been corrected; or
 - vi. The applicant requests that the project be removed.
3. Projects that were removed from the Comprehensive List may be added again in the future.

F. Intended Use Plan and Capitalization Grant Applications

1. At least annually the Division will prepare an IUP for the State Water Board's consideration for delivery to the USEPA. The State Water Board may establish various requirements, conditions, and incentives in the IUP. The IUP will provide information necessary to satisfy USEPA's requirements, including the availability of and applicable limitations on principal forgiveness, the threshold for projects subject to federal cross-cutting requirements, set-aside activities, the availability of refinancing, and a Fundable List of projects anticipated to receive funding based on their ranking, their estimated "readiness to proceed" to funding in that particular year, and the amount of funds available for the year. The Executive Director may amend the IUP for good cause after public review.
2. The Executive Director may apply for and accept Capitalization Grants and approve amendments to the Capitalization Grants.

G. Interest Rate and Other Charges

1. Generally, the interest rate for DWSRF planning/design and construction financing agreements will be fifty percent (50%) of the average interest rate paid by the state on general obligation bonds issued in the prior calendar year, rounded up to the nearest one-tenth of one percent. The interest rate will apply to all repayable financing approved during the year unless the State Water Board has identified in the IUP a lower rate for a specific type or category of eligible project.

2. The State Water Board will utilize the IUP to establish any administrative service charges, financing charges, and incentives.

H. Report to the USEPA

The Division will prepare an Annual Report to the USEPA that describes how the DWSRF program met the goals and objectives identified in the previous year's IUP. The report will be posted on the State Water Board's website.

I. Report to the Legislature

At least once every two years, the Division will prepare a report to the California Legislature regarding the implementation of the DWSRF Program. The report will be posted on the State Water Board's website.

VI. MATCH FINANCING

The state must contribute capital into the DWSRF equal to twenty percent (20%) of the federal capital contributions (i.e., Capitalization Grants). The State Water Board may offer incentivized financing to recipients that contribute matching funds through their financing agreement.

A. Availability

The State Water Board will determine at least once each year whether to offer match financing. This determination will normally be made in the IUP.

B. Match Financing Resolution

An applicant seeking match financing must submit a resolution passed by the applicant's governing body, stating the applicant's intent to provide the matching funds in the amount and at the times necessary to complete the project. *Appendix D* contains a model resolution.

C. Match Financing Terms

The interest rate on match financing agreements will be zero percent (0%). The principal amount of the financing agreement includes both the amount received from the State Water Board and the matching funds contributed by the recipient. The State Water Board may elect to charge a fee to cover the costs of obtaining federal funds. Planning/design financing agreements cannot utilize match financing.

D. Disbursements

The recipient must certify that it has paid at least the match portion of incurred eligible project costs within a particular claim for reimbursement. Such certification must include documentation of payment acceptable to the Division. Once the Division has confirmed payment of the match portion, the remainder of the incurred eligible project costs will be reimbursed.

VII. ASSISTANCE FOR DISADVANTAGED COMMUNITIES

A PWS that serves a DAC with financial hardship is eligible for zero percent (0%) interest rate financing. The criteria for determining such financial hardship is included in *Appendix E*. In addition, the repayment term may be extended to thirty (30) years, provided the repayment term does not exceed the useful life of the project.

A water system which is owned by a public agency or a not-for-profit water company, and whose service area is classified as a DAC may also receive principal forgiveness for a planning/design or construction project. Principal forgiveness will only be offered if the DAC cannot afford to repay all or part of a loan at the time of the project's credit evaluation. The criteria for determining a DAC's ability to afford a loan are included in *Appendix E*.

VIII. ASSISTANCE FOR SEVERELY DISADVANTAGED COMMUNITIES

Small community water systems that are owned by a public agency or a not-for-profit water company that serves a SDAC may be eligible to receive up to one hundred percent (100%) principal forgiveness for a planning/design or construction project, as established in the IUP. A public water system owned by a public school district is determined to serve a SDAC and is deemed to have no ability to repay any financing.

IX. WATER RATE STUDIES

Principal forgiveness recipients may be required to complete a water rate study to cover the costs of operating and maintaining the water system, including the proposed construction project, for a twenty (20) year period from the anticipated start of construction. The rates will generally be expected to be adopted no later than the completion of a planning/design project.

Prior to execution of a construction financing agreement, a recipient must demonstrate sufficient water rates to operate and maintain the water system, including the construction project, for a period of at least five (5) years from the

anticipated completion of construction. The rate adoption must occur prior to the execution of the construction financing agreement.

X. PLANNING/DESIGN FINANCING

An applicant must submit all documents noted below, unless otherwise authorized by the Division for good cause, to obtain planning/design financing. The Division may require that the applicant submit additional information or certifications necessary to ensure that the financing complies with state and federal requirements. *Appendix F* contains the four (4) packages of an application for planning/design financing. The Division will accept partial packages and applications, but will process complete applications ahead of incomplete applications.

A. Planning/Design Application Requirements

1. General Information Package

This package includes basic applicant and project information.

2. Technical Package

i. Scope of Work

- a. The applicant must submit a scope of work which includes the tasks to be performed, the deliverables to be developed, and the anticipated budget for the planning/design project. The scope of work is intended to provide the Division with sufficient information to evaluate whether the planning/design project is eligible for financing.

- (A) The applicant must evaluate all feasible alternatives prior to or during the planning/design project. The evaluation must compare estimated capital, operations and maintenance (O&M) costs over the useful life of each alternative.
- (B) The anticipated environmental impact of each alternative must be evaluated, as required by CEQA/NEPA. Prior to the development of plans and specifications, the applicant should consult with the agencies responsible for implementing local, state, and federal statutes and authorities, and incorporate any recommended design features and measures from those agencies into the project.

(C) The applicant must obtain approval from the Division on the selected alternative. Applicants must contact the Division prior to developing plans and specifications.

ii. Volumetric Pricing and Water Metering

- a. Section 529.5 of the California Water Code requires that any urban water supplier applying for financial assistance from the state for a drinking water treatment project¹ meet certain volumetric pricing and water metering requirements.
- b. All applicants must certify compliance with water metering requirements.

3. Environmental Package

- a. The applicant must provide adequate and complete environmental documentation to allow the State Water Board to fulfill its responsibilities under the California Environmental Quality Act (CEQA) and to meet federal environmental review requirements.
- b. Applicants that are public agencies, whether lead or responsible agencies under CEQA, will be required to file a Notice of Exemption (NOE) for the planning/design project with the State Clearinghouse of the Governor's Office of Planning and Research (State Clearinghouse) prior to execution of the financing agreement.

4. Financial Security Package

i. General Requirements

- a. The Division will review financial documents to determine the applicant's credit capacity as well as the capacity to sustainably operate and maintain its water system.
- b. If the applicant's budget is unable to support DWSRF financing, the Division will work with the applicant to determine alternative methods of financing the planning/design project, if feasible.

ii. Reserve and Coverage

- a. The recipient may be expected to establish and maintain a restricted reserve until the planning/design financing agreement is

¹ Projects involving the installation of water supply meters are not required to meet these requirements when applying for financing.

repaid if the Division determines that credit considerations require such a reserve.

- b. The recipient must comply with coverage covenants in existing material debt or with the coverage requirements of this paragraph, whichever covenants or requirements provide greater coverage. The recipient's net revenues at completion of planning/design pledged to pay all senior debts relying on the PRF must be at least 1.2 times the highest year's senior debt service, and the net revenues pledged to pay all debts must be at least 1.1 times the highest year's aggregate debt service.

iii. Additional Debt

- a. The State Water Board normally expects the DWSRF debt obligation to be a senior debt obligation, unless the Division determines that credit considerations support a different result.
- b. Additional obligations secured by the PRF may be senior to DWSRF obligations in the following circumstances:
 - (A) The DWSRF financing agreement provides for one hundred percent (100%) principal forgiveness; or
 - (B) The senior obligation(s) predates the DWSRF obligation, and the recipient meets the coverage requirements of *Section X.A.4.ii*; or
 - (C) The senior obligation meets the conditions set forth in *Section X.A.4.iii.d*.
- c. Additional obligations secured by the PRF may be on parity with the DWSRF obligations under the following conditions:
 - (A) The applicant's non-subordinate debt is rated "A," or higher, by at least two of the nationally recognized rating agencies; or
 - (B) The applicant is a SDAC and the Division determines that the applicant meets the coverage requirements of *Section X.A.4.ii*, and
 - 1) It would be economically burdensome for the applicant to obtain nationally recognized ratings; or

- 2) Requiring additional debt to be subordinate to the DWSRF obligation will unduly restrict the applicant from obtaining future system debt necessary for water quality improvements.
- d. The applicant may refund senior debt with new senior debt if all of the following conditions are met:
 - (A) The new senior debt refunds or refinances existing debt senior to an existing DWSRF obligation;
 - (B) The new senior debt has the same or earlier repayment term as the refunded senior debt;
 - (C) The new senior debt service is the same or lower than the existing debt service; and
 - (D) The new senior debt will not diminish the applicant's ability to repay its DWSRF obligation(s).

iv. Pledged Revenue and Funds (PRF)

An applicant that is a public agency must submit a resolution or ordinance adopted by its governing board which pledges one or more sources of existing revenue and funds as security for the financing agreement. *Appendix G* contains sample PRF resolutions. A PRF may be a special tax, user fees, water rates and charges, or a special assessment, provided that the applicant has the authority to control and pledge the PRF. The PRF may also include liens on real property and other appropriate security liens.

An applicant that is not a public agency must document its authority to bind itself to the financing agreement and pledge the relevant revenues. It must also submit draft documents in support of filing a Uniform Commercial Code (UCC) lien with the Secretary of State.

v. Existing Debt

- a. If the applicant has no other debt, the Agency's Authorized Representative must verify this.
- b. The applicant must submit a schedule of all debt secured by the PRF, along with a copy of each relevant debt document. This schedule will be an exhibit to the financing agreement and will rank existing debt according to priority in relation to the proposed DWSRF debt (senior, parity, or subordinate).

vi. Financial Statements and Budgets

- a. The applicant must provide three (3) years of financial statements, preferably audited financial statements. The financial statements must include the current year (if available) and the two previous years, or three previous years if the current year has not yet been completed. If the PWS is privately owned, the applicant must provide tax returns involving the PWS for the most recent three (3) years. All applicants must also provide any adopted budget for future year(s).
- b. The applicant must identify any restricted funds and the reason for the restrictions.
- c. The applicant must identify all sources of security to be pledged. If using real property, the applicant must provide at least two appraisals of the value, how the value was determined, and whether the property is currently pledged as security on any other debt.
- d. The applicant must provide its current average residential water rate and calculations employed to represent such a rate. If the average residential water rate is expected to increase following submittal of an application as a result of previously adopted water rate increases, then the applicant shall provide the anticipated average residential water rates and an adopted schedule for their implementation.

vii. Resolutions and Ordinances

The applicant must submit resolutions or ordinances authorizing submittal of the application, authorizing the match component (if match financing is requested), and designating an Authorized Representative by title as a signatory to all relevant financing documents and supporting materials. The applicant must also submit resolutions or ordinances documenting rate setting in compliance with applicable laws, including Proposition 218 or CPUC approval, as applicable.

viii. Governing Authorities

Applicants must have the authority to:

- a. Operate a public water system;

- b. Assess fees for domestic water supply on property owners and consumers in the targeted area or community;
 - c. Legally bind, or cause to be legally bound by the subject system, affected individual property owners in the targeted area or community to accept and pay for domestic water supply from the subject system;
 - d. Hold, or cause to be held by the subject system, all necessary water rights or legally contract for the water supply needed to supply the targeted area or community;
 - e. Acquire and/or construct necessary facilities;
 - f. Acquire necessary rights to an adequate water supply source;
 - g. Enter into a financing agreement with the State Water Board on behalf of the targeted area or community;
 - h. Assess and/or charge homeowners, as necessary, to fund any part of a project not provided as DWSRF financing and to operate and maintain the project for the long-term;
 - i. Enter into contracts, as necessary, with adjacent or neighboring PWSs for water supply sources;
 - j. Enter into contracts, as necessary, with adjacent or neighboring PWSs for the purposes of consolidation. This includes the authority to transfer existing facilities (e.g. wells and distribution pipelines) to achieve a consolidation or regional solution; and
 - k. If the project involves an extension of water service from an existing PWS, undertake the formation necessary to cover the targeted area or community, including LAFCO approval of a boundary extension, annexation, or formation of a new CWS or a regional authority.
- ix. Material Events, Existing Debt, and Debt Limits
- a. The applicant must submit information regarding current, prior, or pending material events (e.g. bankruptcy, defaults, litigation, Grand Jury findings or indictments).
 - b. The applicant must identify any conditions in related debt obligations that must be satisfied prior to executing the DWSRF financing agreement.

- c. The applicant must identify any debt limit to which it is subject.
- x. New Tax, Fee, Charge or Assessments Projections

If a new tax, fee, charge, or assessments will be a PRF, provide budget projections based on the proposed taxes, fees, charges, or assessments.
- xi. Relevant Agreements

The applicant must provide a copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of each party.
- xii. Legal Opinion

The applicant will be expected to submit an opinion from counsel upon execution of the financing agreement, satisfying the Division and the Division's counsel as to concerns material to the financing. The State Water Board does not authorize execution by its designee without such an opinion.
- xiii. California Public Utilities Commission and Surcharges

If the PWS is regulated by the California Public Utilities Commission (CPUC), then the applicant must submit the following documentation: 1) CPUC authorization for the PWS to enter into a DWSRF financing agreement and incur debt for a DWSRF financed project, and 2) CPUC authorization for a surcharge to be pledged as repayment for a DWSRF loan.

B. Eligible Planning/Design Costs

- 1. Eligible costs include the preparation of planning/design documents, including but not limited to:
 - a. Feasibility studies and project reports
 - b. Plans and specifications
 - c. Financial analyses
 - d. Engineering and design documents
 - e. Environmental review and documents

- f. Legal costs
 - g. TMF assessments and documents
 - h. Capital improvement plans
 - i. Asset management plans
 - j. Water rate studies
 - k. Planning financing application
2. Eligible costs that were incurred by the applicant prior to the Division approving the application may be reimbursed, provided all applicable state and federal requirements have been met. If a recipient incurs eligible planning/design costs before the execution of a financing agreement, it does so at its own risk.
 3. The applicant may include a contingency amount in its application to reimburse unforeseen eligible costs. The inclusion of a contingency amount is subject to credit review and approval by the Division. If the credit review shows the applicant can afford repayment, the financing agreement may include the contingency amount.

C. Planning/Design Financing Terms

1. Interest

Interest will accrue from the date of each disbursement and continue to accrue until the financing agreement is fully amortized. The recipient will be invoiced accrued interest during the project, in accordance with *Section XVII.B* of this Policy.

2. Amortization Period

Repayments will be amortized by equal semiannual payments over five (5) years. Repayments shall begin no later than one year from completion of the planning/design project.

3. Restructured Planning/Design Financing

- a. If the applicant intends to refinance the planning/design financing principal as part of a DWSRF construction financing agreement, then the scope of work must ensure development of all documents necessary for construction financing approval. The recipient must

complete the planning/design project prior to the submission of a construction financing application.

- b. The balance of a planning/design financing agreement may be restructured as part of a construction financing agreement. The balance of the planning/design financing agreement will carry the financing terms applicable to the construction financing agreement.
- c. Interest will accrue on the planning/design financing balance upon execution of the construction financing agreement per the terms of the construction financing agreement.
- d. Approval of planning/design financing does not obligate the State Water Board to provide subsequent construction financing.

XI. CONSTRUCTION FINANCING

An applicant must submit all documents noted below, unless otherwise authorized by the Division for good cause, to obtain construction financing. The Division may require that the applicant submit additional information or certifications necessary to ensure the project complies with state and federal requirements. *Appendix H* contains the four (4) packages of an application for construction financing. The Division will accept partial packages and applications, but will process complete applications ahead of incomplete applications.

A. Construction Application Requirements

1. General Information Package

This package includes basic applicant and project information.

2. Technical Package

i. Project Report

The applicant must submit an engineering report, or its equivalent, that contains the information outlined in *Appendix H* as appropriate to the project. Engineering reports must be signed and stamped by a registered Professional Engineer. The contents of the report outlined in *Appendix H* are not prescriptive, but are intended to provide the Division with sufficient information to evaluate whether the project is eligible for DWSRF financing, meets applicable technical requirements, and is likely to meet applicable objectives and standards.

- a. The applicant must evaluate all feasible alternatives. For applicants seeking construction financing, an analysis of alternatives must be submitted as part of the application.
 - b. The applicant must evaluate consolidation of the subject system with nearby water systems. If consolidation is deemed infeasible, the applicant must discuss the reasons for that determination.
 - c. The selected construction project must be the most long-term, cost-effective solution. The engineering analysis required as part of the application must compare estimated capital and operations and maintenance (O&M) costs over the projected term of the financing agreement or over a twenty (20) year period, whichever is longer. The evaluation must analyze the technical effectiveness of each alternative.
- ii. Technical, Managerial, and Financial Capacity
- a. The applicant must provide a completed TMF assessment using the appropriate form in *Appendix C*.
 - b. The Division will review the TMF assessment for the subject system to ensure all mandatory elements of TMF have been met, or will be achieved upon completion of construction.
- iii. Water Conservation and Urban Water Management
- a. Water Conservation

Commencing with construction of the project and continuing throughout the reasonably expected useful life of the project, the recipient is responsible for the implementation of practices substantially equivalent to the urban water conservation “best management practices” of the California Urban Water Conservation Council.
 - b. Volumetric Pricing and Water Metering

Section 529.5 of the California Water Code provides that urban water suppliers must meet certain volumetric pricing and water metering requirements in order to apply for state financial assistance for a drinking water treatment project. All applicants must certify compliance with the water metering requirements.

c. Urban Water Management

The Urban Water Management Planning Act requires that urban water suppliers prepare and adopt an Urban Water Management Plan that includes specific elements, pursuant to Section 10631.5 of the California Water Code. Applicants that are urban water suppliers must comply with this Act to receive financing.

3. Environmental Package

i. General

- a. The applicant must provide adequate and complete environmental documentation to allow the State Water Board to fulfill its responsibilities under the California Environmental Quality Act (CEQA) and to meet federal environmental review requirements. Projects may be required to comply with federal cross-cutting requirements, as applicable per *Section V.F* of this Policy.
- b. Early in the planning stage, the applicant should consult with agencies responsible for implementing local, state, and federal statutes and authorities, and incorporate any recommended design features and measures from those agencies into the project. The applicant should consult with the Division to ensure that the project meets all DWSRF environmental requirements. The State Water Board will coordinate consultations with the appropriate federal authorities when an environmental compliance issue arises or with other federal agencies that have roles in approving or financing the project.
- c. The State Water Board will consider any comments received on draft CEQA documentation and will require the applicant to resolve or address any issues that arise from comments. The applicant must resolve all environmental issues, including obtaining the appropriate permits and approvals (e.g. concurrences and approvals under Section 7 of the federal Endangered Species Act, Section 106 of the National Historic Preservation Act, and Sections 401 and 404 of the Clean Water Act) prior to commencement of construction. The financing agreement may include applicable terms and conditions of the permits and approvals.

ii. Environmental Analysis Documents

- a. Applicants that are public agencies must provide the final, project-specific environmental document, associated reports, and supporting documents showing compliance with CEQA to receive

DWSRF construction financing. An applicant may use a previously prepared CEQA document, provided it is consistent with Section 15153, 15162-15164, 15168, or 15221 of the CEQA Guidelines, and the CEQA document provides an adequate project-specific environmental analysis. If applicable, the applicant must also provide supporting documentation to the State Water Board to comply with federal environmental cross-cutting requirements.

- b. If the environmental document for the project was completed more than five (5) years prior to the expected execution date of the financing agreement, or if the environmental document does not provide a project-specific environmental analysis, the applicant must re-evaluate the project's environmental conditions in an updated environmental document (e.g., Addendum, Amendment, Supplemental, or Subsequent environmental document) and complete the applicable public participation requirements. The applicant must provide a copy of the final updated environmental document with the corresponding public participation and notification documents.

iii. The State Water Board's Role as Responsible Agency

- a. The State Water Board generally expects to be a responsible agency under CEQA. As responsible agency, the State Water Board will complete its environmental review and make findings and determinations consistent with the CEQA Guidelines and the Operating Agreement.
- b. Applicants that are public agencies must follow the CEQA Guidelines, complete the CEQA process as the lead or responsible agency, and provide the State Water Board with final CEQA documentation.
- c. The State Water Board, when acting as responsible agency, will file the appropriate public notification with the State Clearinghouse following the execution of a financing agreement.
- d. Applicants that are public agencies must submit the draft CEQA document to the State Clearinghouse for a minimum thirty (30) day public circulation and comment period. This requirement also applies to any Amendment, Subsequent, or Supplemental environmental documents of previously prepared CEQA documents.
- e. Applicants that are public agencies must file either a Notice of Determination or a Notice of Exemption with the State

Clearinghouse immediately following the applicant's project approval and adoption/certification of the CEQA document and findings.

iv. The State Water Board's Role as Lead Agency

- a. Where the State Water Board is the CEQA lead agency because the applicant is privately owned (such as a mutual water company or investor owned utility), the applicant must provide final drafts and appropriate CEQA documentation, consistent with the CEQA guidelines, for the State Water Board's use.
- b. The State Water Board, when acting as lead agency, will file the appropriate public notification with the State Clearinghouse following the issuance of a financing agreement.

4. Financial Security Package

i. General Requirements

- a. The Division will review financial documents to determine the applicant's credit capacity as well as the capacity to sustainably operate and maintain its water system, including the proposed construction project.
- b. If the applicant's budget is unable to support DWSRF financing, the Division will work with the applicant to determine alternative methods of financing the construction project, if feasible.

ii. Reserve and Coverage

- a. The recipient will normally be expected to establish and maintain, until the financing agreement is repaid, a restricted reserve equal to two semiannual debt service payments that may be accumulated during the first ten (10) years of the loan repayment term, unless the Division determines that credit considerations support a different result. The recipient shall make deposits into the restricted reserve account in an amount and as frequent as instructed by the Division.
- b. The recipient must comply with coverage covenants in existing material debt or with DWSRF coverage requirements, whichever covenants or requirements provide greater coverage. Where net revenues are pledged, the recipient's net revenues at completion of construction pledged to pay all senior debts relying on the PRF must be at least 1.2 times the highest year's senior debt service,

and the net revenues pledged to pay all debts must be at least 1.1 times the highest year's aggregate debt service. Where assessments are pledged, other appropriate covenants and conditions may be imposed.

iii. Additional Debt

- a. The State Water Board normally expects the DWSRF debt obligation to be a senior debt obligation, unless the Division determines that credit considerations support a different result.
- b. Additional obligations secured by the PRF may be senior to DWSRF obligations in the following circumstances:
 - (A) The DWSRF financing agreement provides for one hundred percent (100%) principal forgiveness; or
 - (B) The senior obligation(s) predates the DWSRF obligation, and the recipient meets the coverage requirements of *Section XI.A.4.ii*; or
 - (C) The senior obligation meets the conditions set forth in *Section XI.A.4.iii.d*.
- c. Additional obligations secured by the PRF may be on parity with the DWSRF obligations under the following conditions:
 - (A) The applicant's non-subordinate debt is rated "A," or higher, by at least two of the nationally recognized rating agencies; or
 - (B) The applicant is a SDAC and the Division determines that the applicant meets the coverage requirements of *Section XI.A.4.ii* and:
 - 1) It would be economically burdensome for the applicant to obtain nationally recognized ratings; or
 - 2) Requiring additional debt to be subordinate to the DWSRF obligation will unduly restrict the applicant from obtaining future system debt necessary for water quality improvements.

- d. The applicant may refund senior debt with new senior debt if all of the following conditions are met:
 - (A) The new senior debt refunds or refinances existing debt senior to an existing DWSRF obligation;
 - (B) The new senior debt has the same or earlier repayment term as the refunded senior debt;
 - (C) The new senior debt service is the same or lower than the existing debt service; and
 - (D) The new senior debt will not diminish the applicant's ability to repay its DWSRF obligation(s).

iv. Pledged Revenue and Funds (PRF)

An applicant that is a public agency must submit a resolution or ordinance adopted by its governing board, which pledges one or more sources of existing revenue and funds as security for the financing agreement. *Appendix G* contains sample resolutions. A PRF may be a special tax, user fees, water rates and charges, or a special assessment, provided that the applicant has the authority to control and pledge the PRF. The PRF may also include liens on real property and other appropriate security liens.

An applicant that is not a public agency must document its authority to bind itself to the financing agreement and pledge the relevant revenues. It must also submit draft documents in support of filing a UCC lien with the Secretary of State.

v. Existing Debt

- a. If the applicant has no other debt, the Agency's Authorized Representative must verify this.
- b. The applicant must submit a schedule of all debt secured by the PRF, along with a copy of each relevant debt document. This schedule will be an exhibit to the financing agreement and will rank existing debt according to priority in relation to the proposed DWSRF debt (senior, parity, or subordinate).

vi. Future Capital Needs

- a. The applicant must describe its capital improvement and asset management plans, and the long-term indebtedness needed to

fund its future capital improvements. The applicant must provide any formal capital improvement and asset management plans to the Division.

- b. Unless otherwise specified in the PWS's capital improvement plan that is acceptable to the Division, a budgeted cost for the future replacement of the construction project will be factored into the credit analysis.

vii. Financial Statements and Budget

- a. The applicant must provide three (3) years of financial statements, preferably audited financial statements. The financial statements must include the current year (if available) and the two previous years, or three previous years if the current year has not yet been completed. If the PWS is privately owned, the applicant must provide tax returns involving the PWS for the most recent three (3) years. All applicants must also provide any adopted budget for future year(s).
- b. The applicant must identify any restricted funds and the reason for the restrictions.
- c. The applicant must identify all sources of security to be pledged. If using real property, the applicant must provide at least two appraisals of the value, how the value was determined, and whether the property is currently pledged as security on any other debt.
- d. The applicant must provide its current average residential water rate and calculations employed to represent such a rate. If the average residential water rate is expected to increase following submittal of an application as a result of previously adopted water rate increases, then the applicant shall provide the anticipated average residential water rates and an adopted schedule for their implementation.

viii. Resolutions and Ordinances

The applicant must submit resolutions or ordinances authorizing submittal of the application, authorizing the match component (if match financing is requested), and designating an Authorized Representative by title as a signatory to all relevant financing documents and supporting materials. The applicant must also submit resolutions or ordinances documenting rate setting in

compliance with applicable laws, including Proposition 218 or CPUC approval, as applicable.

ix. Governing Authorities

Applicants must have the authority to:

- a. Operate a public water system;
- b. Assess fees for domestic water supply on property owners and consumers in the targeted area or community;
- c. Legally bind, or cause to be legally bound by the subject system, affected individual property owners in the targeted area or community to accept and pay for domestic water supply from the subject system;
- d. Hold, or cause to be held by the subject system, all necessary water rights or legally contract for the water supply needed to supply the targeted area or community;
- e. Acquire and/or construct necessary facilities;
- f. Acquire necessary rights to an adequate water supply source;
- g. Enter into a financing agreement with the State Water Board on behalf of the targeted area or community;
- h. Assess and/or charge homeowners, as necessary, to fund any part of a project not provided as DWSRF financing and to operate and maintain the project for the long-term;
- i. Enter into contracts, as necessary, with adjacent or neighboring PWSs for water supply sources;
- j. Enter into contracts, as necessary, with adjacent or neighboring PWSs for the purposes of consolidation. This includes the authority to transfer existing facilities (e.g. wells and distribution pipelines) to achieve a consolidation or regional solution; and
- k. If the project involves an extension of water service from an existing PWS, undertake the formation necessary to cover the targeted area or community, including LAFCO approval of a boundary extension, annexation, or formation of a new CWS or a regional authority.

- x. Material events, existing debt, and debt limits
 - a. The applicant must submit information regarding current, prior, or pending material events (e.g. bankruptcy, defaults, litigation, Grand Jury findings or indictments).
 - b. The applicant must identify any conditions in related debt obligations that must be satisfied prior to executing the DWSRF financing agreement.
 - c. The applicant must identify any debt limit to which it is subject.

xi. New Tax, Fee, Charge or Assessments Projections

If a new tax, fee, charge, or assessments will be a PRF, provide budget projections based on the proposed taxes, fees, charges, or assessments.

xii. Relevant Agreements

The applicant must provide a copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of each party.

xiii. Legal Opinion

The applicant will be expected to submit an opinion from counsel upon execution of the financing agreement, satisfying the Division and the Division's counsel as to concerns material to the financing. The State Water Board does not authorize execution by its designee without such an opinion.

xiv. California Public Utilities Commission and Surcharges

If the PWS is regulated by the California Public Utilities Commission (CPUC), then the applicant must submit the following documentation: 1) CPUC authorization for the PWS to enter into a DWSRF financing agreement and incur debt for a DWSRF financed project, and 2) CPUC authorization for a surcharge to be pledged as repayment for a DWSRF loan.

B. Eligible Construction Costs

To the extent consistent with federal and state authority, the following are categories of eligible and ineligible costs. The applicant's engineer must identify eligible and ineligible costs.

1. Eligible Project Costs

- a. Treatment facilities, including monitoring equipment, process control systems, back-up reliability equipment, start-up costs, purchase of property, right-of-ways, and easements for land that will be an integral part² of the treatment process;
- b. Water sources if necessary to comply with state or federal drinking water standards, including drilling costs, equipment, structures to protect the quality of source water, and purchase of source capacity in another water system. Treatment facilities on a new source are eligible if required for the source to be utilized.
- c. Consolidation where the project involves the restructuring of two or more PWSs into a single PWS, with water systems physically interconnected. Typical consolidation costs, including but not limited to connection fees, source capacity charges, costs to secure or develop new water sources to meet the additional demand, and legal fees for preparation of documents are eligible.
- d. Value appraisal and the cost of purchasing a water system may be eligible as specified in the IUP;
- e. Pipelines and water mains that are integral to the project and are necessary for the project to function properly. Purchase of property, right-of-ways, and easements must be confined to the pipelines for which it was acquired;
- f. Implementing measures needed to comply with TMF requirements, including conducting water capacity/demand analyses, technical evaluations, and the development of operations plans;
- g. Equipment and additional capacity to provide fire protection as required by the applicable governing fire code and incidental appurtenances for fire protection such as fire hydrants;

² Integral part means only the land that is necessary to accommodate the treatment facilities, including reasonable administration, employee parking, and laboratory building space directly related to their operation. Land whose purpose is to provide a buffer zone around treatment facilities, public parking, or reserved for future expansion is not eligible.

- h. Installation of water supply meters³;
 - i. Backflow prevention devices if: (1) installation is required for operation of the project, and (2) the responsibility for installation of such devices rests with the PWS;
 - j. Contingency for change orders approved by the Division for increased costs provided the costs are eligible, consistent with the approved scope of the project and the credit review;
 - k. Stationary and mobile equipment integral to the project. Equipment must be dedicated to the storage, treatment, or distribution facilities for which it was purchased;
 - l. Preparation of the construction application, planning/design documents, construction management, engineering, and administration;
 - m. Preparation of environmental review documents, and mitigation measures, such as landscaping, when mandated by state and/or federal agencies;
 - n. Necessary insurance related to the construction contract;
2. Ineligible Costs
- a. Land acquisition that is not an integral part of the project;
 - b. Facilities that are constructed primarily to serve future growth;
 - c. Construction of dams or rehabilitation of dams;
 - d. Water rights, except when acquired through physical or managerial consolidation with another water system;
 - e. Reservoirs or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located;
 - f. Private laterals beyond the public right-of-way;
 - g. Decorative items (art work, sculptures, reflective ponds, fountains, etc);

³ If a construction project involves the installation of water meters, the recipient shall implement volumetric pricing and begin charging volumetric rates no later than one year following the project completion date.

- h. Operation and maintenance costs and extended warranties for equipment and act of God, flood, and earthquake insurance costs;
 - i. Motor vehicles used for employee transportation or for the transportation of materials;
 - j. Laboratory fees for routine compliance monitoring;
 - k. Operation and maintenance expenses except to the extent they are used in the startup and testing of the completed project;
 - l. Laboratories, except those necessary for operation of a treatment facility.
- 3. Eligible costs that were incurred by the applicant prior to the Division approving the application may be reimbursed, provided all applicable state and federal requirements have been met. If a recipient incurs eligible equipment or material costs before the execution of a financing agreement, it does so at its own risk.
 - 4. Costs previously disbursed under a planning/design financing agreement are not eligible for reimbursement in a construction financing agreement.
 - 5. The Division will determine eligible capacity of the project and related facilities using the metrics and limitations established in *Appendix I*, prior to financing approval. The capacity of the project and related facilities must be consistent with any applicable environmental constraints.

C. Construction Financing Terms

1. Interest

Interest will accrue from the date of each disbursement and continue to accrue until the financing agreement is fully amortized. The recipient will be invoiced accrued interest during the project, in accordance with *Section XVII.B* of this Policy.

2. Amortization Period

Repayments will be amortized by equal semiannual payments beginning no later than one year from the project completion date over twenty (20) years, unless an extended period is approved per *Section VII or VIII* of this Policy.

XII. FINANCING AGREEMENTS

A. Financing Approval

1. The recipient may receive a financing agreement based on the estimated eligible project costs after an application for its project has been reviewed and approved.
 - a. For routine, noncontroversial projects the Executive Director, Deputy Director of the Division, or designee, may approve and execute planning/design and construction financing agreements and amendments. Non-routine or controversial projects will be considered by the State Water Board.
 - b. Upon review and approval of required documents, the Division will prepare a financing agreement. The Division will not disburse funds until the financing agreement is executed and all conditions for disbursement set forth in the financing agreement have been met.
2. The Division may issue a notice to an applicant that: (1) identifies costs eligible for DWSRF financing, (2) identifies terms that will be applicable to a financing agreement provided that specific conditions are met, and (3) establishes the conditions that must be met before a financing agreement will be executed.

B. Execution of the Financing Agreement

The Executive Director, Deputy Director of the Division, or designee, may execute agreements and amendments on behalf of the State Water Board for projects with an approved application. The State Water Board will not disburse funds until after a financing agreement has been executed.

1. Conditions and Expiration Date(s)

Financing agreements may include appropriate conditions and expiration dates to ensure that projects are completed expeditiously in conformance with applicable requirements. The Deputy Director or designee may waive or amend a financing agreement expiration date for good cause. If a recipient misses an expiration date, and does not receive such an extension, it may need to reapply for DWSRF funding.

2. Compliance with Federal and State Statutes and Authorities

The recipient must agree to comply with, and require its contractors and subcontractors to comply with, all applicable federal and state laws, rules and regulations, permits, and all applicable local ordinances, specifically

including, but not limited to, environmental, procurement and safety laws, rules, regulations, permits, ordinances, and labor compliance requirements.

3. Disadvantaged Business Enterprise (DBE)

For projects to which federal cross-cutting authorities apply, the recipient must comply with DBE requirements. The DBE Program is a federal program designed to increase the participation of DBEs. *Appendix J* contains required forms, reporting and additional guidance on DBE requirements.

4. Davis Bacon

All planning/design and construction financing agreements will contain Davis Bacon provisions (including appropriate wage determinations and required clauses in bids and contracts, verification of registration in approved U.S. Department of Labor Apprenticeship Programs, conducting wage rate interviews, collection/review of weekly payroll and compliance statements, posting applicable wage and whistle blower notices at construction sites), no matter when construction commenced or commences.

5. Procurement Procedures

- a. When contracting for professional services (e.g. professional engineering, environmental, land surveying, project management), recipients must implement procedures that assure such services are engaged on the basis of demonstrated competence, qualifications, and at reasonable prices . See *Appendix K* for guidance on the engineering firm selection process.
- b. Recipients that are public agencies must comply with applicable state or local bidding requirements when contracting for construction work. Privately owned water systems are required to comply with the procedures and requirements set forth in *Appendix L*. The recipient must certify that has complied with all applicable contracting requirements.
- c. Neither the USEPA nor the State Water Board will participate in resolving bid or contractual disputes. The recipient will have sole responsibility to resolve all bid or contractual disputes. The State Water Board will not reimburse legal or other costs associated with such disputes.

C. Financing Agreement Amendments

1. The Division will use the bids, proposals, and purchase orders accepted by the recipient, along with the requested contingency amount to determine if a financing agreement amendment is necessary. Cost increases will be evaluated on a case by case basis, and are subject to the recipient's credit capacity.
2. If an amendment is approved, the Division will incorporate its eligibility decisions into an amended financing agreement and send the amendment to the recipient for signature. The amended financing agreement must be executed prior to disbursement of costs associated with project changes identified in the amendment.
3. The project completion date may be revised by amending the financing agreement, if necessary. The revised project completion date will be established by mutual agreement between the Division and the recipient.
4. Change orders will be reviewed on a case by case basis. The recipient must cover change order costs until such costs are approved by the Division. The Division will disencumber any unused funds, including contingency, at the end of the project.
5. Where the financing agreement provides for one hundred percent (100%) principal forgiveness, the total amount of DWSRF principal forgiveness cannot exceed the limits established in the IUP or the amount made available by USEPA. The Division will not approve an amendment which results in these limits being exceeded.
6. All project changes that result in costs that exceed the approved budget, for which the Division has determined it cannot finance, will be the responsibility of the recipient.

XIII. DISBURSEMENTS

All disbursements are subject to federal and state requirements and/or limitations notwithstanding any provisions of this Policy. A recipient must submit disbursement requests in a timely manner and at the discretion of the Division to ensure the timely and expeditious use of DWSRF funds. Costs submitted to the Division must have been incurred, but the recipient does not need to have actually paid the costs before requesting reimbursement. The Division will not disburse funds for construction until the recipient adopts any required rate increase, assessment, surcharge, or other charge and demonstrates the rates, assessment, surcharge, or other charge, were adopted in accordance with the legal requirements the recipient is subject to for the setting of rates, assessments

or other charges to customers. (Publicly owned water systems are generally subject to Proposition 218 requirements. See California Constitution, article XIII C and XIII D; U.S.C. Section 53750, et seq.)

A. Disbursement Requests

1. The Division will send the recipient a copy of the required forms to request reimbursement with the financing agreement. The applicant will be expected to submit a resolution or ordinance designating an Authorized Representative by title as a signatory to budget and claim forms. *Appendix M* contains claim forms and instructions for requesting disbursements.
2. The recipient must ensure that adequate local funding is available to pay its consultants and contractors in case the disbursement is not processed before payment to the consultant or contractor is due.
3. In limited circumstances, principal, interest and fees on bridge financing may be eligible for reimbursement. Applicants should contact the Division with the terms of such bridge financing prior to securing funds or establishing a credit line.
4. The recipient must certify that work has been completed and that claimed costs were incurred. The recipient must submit invoices or other documentation acceptable to the Division to substantiate the reimbursement of soft costs.
5. The Division may reimburse eligible pre-purchase material and equipment costs that were incurred prior to the execution of the financing agreement. The recipient must submit invoices or other documentation acceptable to the Division to substantiate the reimbursement of such costs.

B. Final Disbursement

1. The financing agreement will establish a deadline for submittal of the final disbursement request. The complete final disbursement request must be received by the Division in a timely manner.
2. Prompt submittal of the final disbursement request is the responsibility of the recipient. If the Division has not received the complete final disbursement request and the Division has not issued prior approval to submit the final disbursement request at a later time, the undisbursed balance of the financing agreement is subject to deobligation.

XIV. CONSTRUCTION

A. Pre-Project Conference or Media Events

The recipient must notify the Division of any press or public media events related to the project with at least ten (10) days' notice.

B. Interim and Final Inspections

1. Interim inspections during construction may be conducted.
2. A final project inspection will be conducted. A due date for submission of the Project Completion Report will be established in the financing agreement.

C. Progress Reports

At least quarterly, the recipient must submit progress reports on the status of project activities starting with the issuance of the executed financing agreement and ending upon final disbursement. The reports must contain at least the following information:

1. A summary of progress to date including a description of progress since the last report, percent complete, percent invoiced and percent schedule elapsed;
2. A listing of change orders including amount, description of work, and change in contract amount and schedule;
3. Any problems encountered, proposed resolutions, schedule for resolutions and status of previous problem resolutions; and
4. A summary of compliance with environmental conditions, if applicable.

XV. PROJECT COMPLETION REPORT

The recipient must notify the Division that its construction project was completed by submitting a Project Completion Report signed by a registered engineer to the Division and the District Office of the Division of Drinking Water. The Project Completion Report must be submitted on or before the due date established per *Section XIV.B.2* of this Policy. The Project Completion Report must describe the project, describe the water quality or quantity problem the project sought to address, discuss the project's likelihood of successfully addressing that water quality or quantity problem in the future, and summarize compliance with environmental conditions, if applicable.

XVI. RECORD KEEPING REQUIREMENTS

All recipients are required to maintain separate project accounts in accordance with federal requirements, as specified in the financing agreement. (See OMB Circular A-133)

XVII. FINANCING PAYMENTS

- A. Interest and other charges, if applicable, will accrue on all disbursements on the date of each disbursement. During a planning/design or construction project, the recipient shall pay interest to the State Water Board on all financing disbursements. Interest accrued on financing disbursements cannot be deferred. The Division will invoice the recipient semiannually on interest accrued during the project.
- B. The Division will issue a final payment schedule after the recipient submits an approvable final disbursement request. The final payment schedule will include the following:
 - 1. The interest rate, administrative service charges, and other charges as appropriate, if applicable;
 - 2. The final loan principal amount including interest, charges, and fees, if applicable; and
 - 3. A complete amortization table.
- C. The recipient must make its first semiannual payment not later than one year following the project completion date, as established in the financing agreement and any amendments thereto.
 - 1. As a courtesy, the Division will normally send a payment notice approximately thirty (30) days before the payment due date, but prompt payment remains the responsibility of the recipient.
 - 2. The recipient will have a ten (10) day grace period, after which time the State Water Board may assess a penalty in the amount of costs incurred for lost interest earnings, staff time, bond default penalties, and other costs incurred or flowing from the late payment. Any penalties will be deposited in the DWSRF account. Penalties will not change the principal balance of the financing agreement and will be treated as a separate receivable in addition to the semiannual payment due.

D. All payments are to be sent to:

DWSRF Accounting Office
State Water Resources Control Board
Attention: DWSRF Program
Post Office Box 1888
Sacramento, CA 95812-1888

XVIII. BOARD RESERVATION OF AUTHORITY

- A. Prior to approving any financing, the State Water Board reserves the right to modify this DWSRF Policy as necessary to provide for effective and equitable use of DWSRF funds, including:
1. Reducing the eligible funding amount for any project for due cause;
 2. Conforming to applicable state and federal laws, rules, regulations, or agreements, including but not limited to the Operating Agreement, the Capitalization Grant Agreement, and agreements related to any DWSRF revenue bonds.
- B. The Deputy Director of the Division may update and amend the DWSRF Policy Appendices and create new Appendices, unless doing so would require additional approval by USEPA or the Executive Director, as necessary for administrative or procedural changes not in conflict with this Policy.

XIX. DISPUTES

- A. Approvals or actions taken by the Division's predecessors pursuant to statutes, regulations, and policies in affect at the time of the approvals or actions remain valid. Division approvals or actions after the effective date of this Policy that conflict with or are inconsistent with approvals or actions taken by the Division's predecessors will be resolved by the Deputy Director of the Division.
- B. An applicant or recipient may appeal a staff decision within thirty (30) days to the Deputy Director of the Division or designee, for a final Division decision. An applicant or recipient may appeal a final Division decision to the State Water Board within thirty (30) days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State

Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.

- C. Where a financing agreement has been executed, the dispute provisions of that agreement will control, and the dispute provisions of this section are inapplicable.